



***Office of Chief Public Defender  
State of Connecticut***

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**TESTIMONY OF SUSAN O. STOREY, CHIEF PUBLIC DEFENDER  
APPROPRIATIONS COMMITTEE  
HEARING ON PROJECTED DEFICIENCIES OF STATE AGENCIES  
NOVEMBER 12, 2015**

The Office of Chief Public Defender is currently experiencing increased Child Protection and Habeas caseloads that are resulting in significant increased costs in the Assigned Counsel and Expert Witnesses Accounts. These costs are resulting in a projected FY 16 deficiency of \$4.37 million. In order to understand the current deficiencies, it is essential to recognize that the Public Defender Services Commission cannot control the volume of cases received by our Child Protection or Habeas field offices. If legislation is passed, as in 2012, or other agencies institute policies that result in sudden increases in criminal or child protection caseloads, our Agency is constitutionally mandated as a "core" function to provide representation for those cases. The below chart details the FY 16 projected deficiency.

	FY 16 Projected
Child Protection	\$ 3,700,000
Habeas	\$ 520,000
Expert Witnesses	\$ 150,000
Total	\$ 4,370,000

**Child Protection**

The Division is experiencing a FY 16 deficiency of \$3.7million in the Assigned Counsel Account due to the increased number of child protection cases. The cost for representation in child protection (CP) cases has increased due

to the growing numbers of cases being filed by the Department of Children and Families (DCF) in the Superior Courts for Juvenile Matters. The Division of Public Defender Services is required to provide counsel in an increasing number of child protection cases for all children, indigent parents, and for any party where the court orders counsel “in the interest of justice” (IOJ). **The Division has no control over the number of cases the Agency receives from the courts and is required to provide representation as a “core” function.** As indicated by the chart below, there were decreased filings from 2012 - 2014. However, filings have increased significantly in FY 2015. This increase is projected to continue in FY 2016.

Fiscal Year	Child Protection Petitions
	<u>Added (source: Judicial Branch)[1]</u>
2016	12,000
2015	10,307
2014	8,364
2013	8,224
2012	8,187
2011	9,454

In addition, litigation costs have increased, as trends indicate that more child protection matters are being litigated. Therefore, DPDS is incurring costs for each new case which, in addition to the initial fee, also causes increased costs for approved hourly billing events, experts, transcripts, and subsequent appellate legal representation expenses. There have also been a number of extraordinarily complex cases that have resulted in unusually high expenses. Finally, we are beginning to experience the fiscal impact of the Judicial Department’s decision to restrict the work of their interpreters to courtroom translation. Our Agency must now permit attorneys to engage private translators at additional expense to DPDS in order to properly communicate and advise their clients. In some cases, DPDS must also pay for and provide translations of court transcripts to non - English speaking clients. In the complex cases, these expenses have been considerable. The state’s efforts to increase its collection of outstanding child support obligations through the use of “Capias (arrest) Sweeps” of persons who are delinquent in their support payments has resulted in the need to add additional attorneys assigned to cover these courts.

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[1] Child Protection is comprised of: neglect, termination of parental rights, revocation of commitment, adoption, reinstatement of parent as guardian and review of permanency cases

The Child Protection deficiency was calculated using the projected child protection FY 16 caseload of 12,000, which is an increase of 3,700 cases from FY 14. The deficiency includes \$1.85 million for flat rate case costs, and an additional \$1.85 million for child protection hourly billings.

## Habeas

Our Division is also experiencing a deficiency of \$520,000 in the Assigned Counsel Account and \$150,000 in the Expert Witnesses Account for the current fiscal year. The increase is due to increased habeas costs in the Assigned Counsel and Expert Witness Accounts. Costs have increased primarily as a result of a bill passed in the session of 2012, **HB 5554, *An Act Concerning Habeas Corpus Reform***. The legislation reduced the length of time in which a habeas petition can be filed, which in turn has resulted in an influx of habeas petitions received by the Agency. For the 6 years preceding the reform legislation – the average number of cases assigned out to contract attorneys was 223 per year. This year we expect to exceed 650 cases. As a consequence, the cost of habeas cases continues to increase each month. **Representation in these cases is also a “core” function of this Agency’s responsibility, and the Division has no control over the number of indigent petitioners that must be afforded counsel upon appointed by the court.**

The chart below illustrates the increases in the number of habeas cases received each month by this Agency. This calendar year, the Public Defenders have received an average of 54 cases per month, which is up by 4 cases per month compared to the previous year. Using this trend, we are projecting habeas cases to continue to increase in the next fiscal year, resulting in an increased cost of \$520,000 in the Assigned Counsel account and \$150,000 in the Expert Witnesses account.

Month	2013	2014	2015	2016
JAN		40	34	58
FEB		22	74	58
MAR		61	80	58
APR		101	43	58
MAY		54	50	58
JUNE		29	53	58
JULY		40	45	58
AUG		41	53	58
SEPT	110	62	54	58
OCT	50	53	54	58
NOV	27	52	54	58
DEC	16	47	54	58

TOTAL	203	602	648	696
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This increase was calculated using the average cost per habeas case of \$11,324 for Assigned Counsel and \$2,083 in Expert Witness costs. The total Assigned Counsel FY 16 increase using the case trends is \$520,904. The total Expert Witnesses FY 16 increase using the case trends is \$112,500.

## **Controlling Costs**

**The Office of Chief Public Defender has taken action to control costs and to mitigate deficiencies in these Accounts. The following steps have been taken:**

- OCPD now uses a “firm model” for representation in Habeas cases. These groups of experienced attorneys can handle and successfully resolve an increased number of habeas cases at a reduced hourly rate (\$65 rather than \$75 per hour). Due to the dramatic increase in the numbers of new cases to which attorneys are appointed, this has resulted in significant savings.
- Implementation of the case assignment/compensation database checks all billing data for each individual assigned counsel attorney against all other billing submissions. This system has completely eliminated the possibility of duplicate billings.
- Enhance auditing procedures in the new billing system will automatically decline and return bills submitted by assigned counsel if they are found to be non-compliant with billing event restrictions, hourly approval limitations of other issues.
- Subpoena service for CP cases is now handled in-house by public defender staff rather than by marshal services, achieving significant savings.
- Public defender staff attorneys now also handle some of the representation of clients in child protection cases. These clients would have been assigned to contract attorneys in prior years.
- OCPD is now currently evaluating the possibility of replicating the Hartford Family Support Magistrate Court, staffed by a public defender attorney, in other courts. If implemented, this could result in significant savings and increased court efficiency.